



House of Peers, though he then said in their House: of which, your Lordships have been so
 sensible, that a free Conference, for settling your Lordships' Justice, should be
 with-drawn, then to be Committed. And had not that Justice been denied to the Com-
 mons, your Lordships would have been in a better posture to have managed and adju-
 ing a Bill for settling the Earl of *Dartmouth* and answer that Justice from which he
 was tied; had been saved, and had been employed for the Preservation of His Majesty's Par-
 liament, and the Security of the Nation, and in the Execution of the other, it is to be
 he had not been in a better posture to have managed and adjudge the Justice, and the
 First of June, 1679, your Lordships were in a better posture to have managed and adju-
 waiting to give a Proposition of the Justice of the Nation, as he had done since the Com-
 mons exhibited their Articles of Impeachment against him.

PROCEEDINGS

OF
 Betwixt the
 TWO HOUSES:

Which were delivered by the House of Commons,
 to the Lords, at the Conference touching the Tryal of the
 Lords in the Tower. On Monday the 26th. of May, 1679.

The Commons have always desired, that a good Correspondence may be preserved be-
 tween the Two Houses.

There is now depending between your Lordships and the Commons, a Matter of
 the greatest Weight: In the Transactions of which, your Lordships seem to appre-
 hend some Difficulty in the Matters proposed by the Commons.

To clear this, the Commons have desired this Conference, and by it they hope to mani-
 fest to your Lordships, that the Propositions of the House of Commons, made by their Com-
 mittee, in relation to the Tryal of the Lords in the Tower, have been, only such as are well
 warranted by the Laws of the Parliament, and Constitutions of the Government, and in no
 sort intrench upon the Judicature of the Peers; but are most necessary to be insisted upon, that
 the Antient Rights of Judicature in Parliament may be maintained.

The Commons readily acknowledge, that the Crimes charged upon the Earl of *Portsmouth*, Vis-
 count *Stafford*, Lord *Peere*, Lord *Arundel of Wardour*, and Lord *Bellasis*, are of deep Guilt,
 and call for speedy Justice: But withall, they hold, That any Change in Judicature in Parlia-
 ment, made without Consent in full Parliament, to be of pernicious Consequence, both to
 his Majesty, and his Subjects; and conceive themselves obliged to transmit to their Posterity,
 all the Rights which of this kind they have received from their Ancestors, by putting your Lord-
 ships in mind of the Progress that has already been between the Two Houses, in relation to the
 Propositions made by the Commons, and the Reasonableness of the Propositions themselves:
 They doubt not to make it appear, that their Aim has been no other, than to avoid such Con-
 sequences, and preserve that Right, and that there is no delay of Justice on their Part. And
 to that end, do offer to your Lordships the ensuing Reasons and Narrative: That the Com-
 mons in bringing the Earl of *Dartmouth* to Justice, and in discovery of that Execrable and Traito-
 rous Conspiracy, (of which the five *Peers* Lords now stand impeached; and for which some
 of their wicked Accomplices have already undergone the Sentence of the Law, as Traytors and
 Murderers) have laboured under many great Difficulties, is not unknown to your Lord-
 ships.

Nor is it less known to your Lordships, That upon the Impeachment of the House of Com-
 mons, against the Earl of *Dartmouth* for High Treason, and other High Crimes, Misdemeanors,
 and Offences, even the Common Justice of sequestrating him from Parliament, and forthwith
 committing him to safe Custody, was then required by the Commons, and denied by the

House

House of Peers, though he then Sate in their House : of which, your Lordships have been so sensible, that at a free Conference the Tenth of *April* last, your Lordships declared, That it was the Right of the Commons, and well warranted by Presidents of former Ages; That upon an Impeachment of the Commons, a Peer so Impeached, ought of Right to be ordered to with-draw, and then to be Committed. And had not that Justice been denied to the Commons, a great part of this Session of Parliament, which hath been spent in framing and adjusting a Bill, for causing the Earl of *Danby* to appear, and answer that Justice from which he was fled; had been saved, and had been employed for the Preservation of His Majesties Person, and the Security of the Nation, and in Prosecution of the other five Lords. Neither had he had the Opportunity for procuring for himself that Illegal Pardon, which bears date the First of *March* last past, and which he hath now pleaded in Bar of his Impeachment : Nor of wasting so great a proportion of the Treasure of the Kingdom, as he hath done, since the Commons exhibited their Articles of Impeachment against him.

After which time thus lost by reason of the Denyal of that Justice, which of right belonged to the Commons upon their Impeachment, the said Bill being ready for the Royal Assent, the said Earl then rendered himself; and by your Lordships Order of the Sixteenth of *April* last, was Committed to the Tower. After which, he pleads the said Pardon; and being prest, did at length declare, He would rely upon, and abide by that Plea; which Pardon pleaded, being illegal and voyd, and so ought not to bar, or preclude the Commons from having Justice upon the Impeachment. They did thereupon, with their Speaker, on the Fifth of *May* instant, in the Name of Themselves, and all the Commons of *England*, demand Judgment against the said Earl, upon their Impeachment : Not doubting, but that your Lordships did intend in all your Proceedings upon the Impeachment, to follow the usual Course and Method of Parliament.

But the Commons were not a little surprized by the Message from your Lordships, delivered them on the Seventh of *May*; thereby acquainting them, That as well the Lords Spiritual as Temporal, had ordered, that the Tenth of *May* instant, should be the Day for hearing the Earl of *Danby*, to make good his Plea of Pardon. And that on the Thirteenth of *May*, the other Five Lords Impeached, should be brought to their Tryal : And that your Lordships had addressed to His Majesty, for naming of a Lord High Steward, as well in the Case of the Earl of *Danby*, as the other five Lords.

Upon consideration of this Message, the Commons found, that the admitting of the Lords Spiritual to exercise Jurisdiction in these Cases, was an Alteration of the Judicature in Parliament; and which extended as well to the Proceeding against the Five Lords, as the Earl of *Danby*. And that if a Lord High-Steward should be necessary upon Tryal on Impeachments of the Commons the Power of Judicature in Parliament, upon Impeachments, might be defeated, by suspending or denying a Commission to Constitute a Lord High-Steward.

And that the said days of Tryal appointed by your Lordships, were so near to the time of your said Message, that these Matters, and the Method of proceeding upon the Tryal, could not be adjusted by Conference betwixt the Two Houses, before the Day so nominated. And consequently the Commons could not then proceed to Tryal, unless the zeal which they have for speedy Judgment against the Earl of *Danby*, (that so they might proceed to Tryal of the other Five Lords) should induce them at this Juncture, both to admit the enlargement of your Lordships Jurisdiction, and to sit down under these or any Hardships, though with the hazard of all the Commons Power of Impeaching for time to come) rather than the Tryal of the said Five Lords should be deferred for some short time, whilst these matters might be agreed on and settled.

For reconciling Differences in these great and weighty Matters, and for saving that time which would necessarily have been spent in Debates and Conferences betwixt the two Houses, and for expediting the Tryal, without giving up the Power of Impeachment, or rendering them ineffectual.

The Commons thought fit to propose to your Lordships, that a Committee of both Houses might be appointed for this purpose. At which Committee (when agreed to by your Lordships,) it was first proposed, that the time of Tryal of the Lords in the Tower should be put off till the other Matters were adjusted, and it was then agreed, that the Proposition as to the time of the Tryal, should be the last thing considered. And the effect of this Agreement stands reported upon your Lordships Books.

After which, the Commons communicated to your Lordships, by your Committee, a Vote of theirs, (*viz.*) That the Committee of the Commons should insist upon their former Vote of their House, That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower, and that when that Matter should be settled, and the Method of Proceedings adjusted, the Commons would then be ready to proceed upon the Tryal of the Pardon of the Earl of *Danby*, against whom they had before demanded Judgment, and after-

wards to the Tryal of the other Five Lords in the Tower. Which Vote extended as well to the Earl of *Danby*, as the other Five Lords; but the Commons as yet received nothing from your Lordships towards an Answer of that Vote; save that your Lordships have acquainted them, that the Bishops have asked leave of the House of Peers, that they might withdraw themselves from the Tryal of the said Five Lords, with liberty of entering their usual protestation.

And though the Commons Committee have almost daily declared to your Lordships Committee, that that was a necessary point of Right to be settled before the Tryal, and offered to debate the same; your Committee always answered, that they had not any Power from your Lordships, either to confer upon, or to give any Answer concerning that Matter.

And yet your Lordships, without having given the Commons any satisfactory Answer to the said Vote, or permitting any Conference or Debate thereupon, and contrary to the said Agreement, did on Thursday the Twenty second of May, send a Message to the Commons, Declaring, That the Lords Spiritual as well as Temporal, had ordered that the Twenty Seventh of this instant May be appointed for the Tryal of the Five Lords.

So that the Commons cannot but apprehend, that your Lordships have not only departed from what was agreed on, and in effect laid aside, that Committee which was constituted for preserving a good Understanding betwixt the Two Houses, and better dispatch of the weighty Affairs now depending in Parliament; but must also needs conclude from the Message, and the Votes of your Lordships on the fourteenth of May, That the Lords Spiritual have a Right to stay and sit in Court, till the Court proceeds to the Vote of Guilty or not Guilty. And from the Bishops asking leave (as appears by your Lordships Books two days after your said Vote) that they might withdraw themselves from the Tryal of the said Lords, with liberty of entering their usual Protestation, & by their persisting still to go on and give in their Votes Proceedings upon the Impeachment; That their desire of leave to withdraw at the said Tryal, is only an Evasive Answer to the before-mentioned Vote, of the Commons, and chiefly intended as an Argument for a Right of Judicature in Proceedings upon Impeachment, and as a Reserve to Judge upon the Earl of *Danby's* Plea of Pardon, and upon these and other like Impeachments; although no such Power was ever claimed by their Predecessors, but is utterly denied by the Commons. And the Commons are the rather induced to believe it so intended, because the very asking leave to withdraw, seems to imply a Right to be there, and that they cannot be absent without it.

And because by this way, they would have it in their Power, whether or no for the future, either in the Earl of *Danby's* Case, or any other, they will ever ask leave to be absent; And the Temporal Lords a like power of denying leave, if that should once be admitted necessary.

The Commons therefore are obliged not to proceed to the Tryal of the Lords on the Twenty Seventh of this instant May, but to adhere to their aforesaid Vote: And for their so doing, besides what hath been now and formerly by them said to your Lordships, do offer you these Reasons following.

REASONS.

I.

BEcause your Lordships have received the Earl of *Danby's* Plea of Pardon, with a very long and unusual Protestation; wherein he hath aspersed His Majesty by false Suggestions, as if His Majesty had Commanded or Countenanced the Crimes he stands charged with; and particularly suppressing and discouraging the Discovery of the Plot, and endeavouring to introduce an Arbitrary and Tyrannical way of Government: Which remains as a scandal upon Record against His Majesty, tending to render His Person and His Government odious to His People; against which it ought to be the first and principal care of both Houses to vindicate His Majesty, by doing justice upon the said Earl.

II.

The setting up a Pardon to be a Bar of an Impeachment, defeats the whole use and effect of Impeachments; and should this point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future: Whereby the chief Institution for the preservation of the Government, (and consequently the Government it self) would be destroyed.

stroyed. And therefore the Case of the said Earl, (which in consequence concerns all Impeachments whatsoever) ought to be determined before that of the said Five Lords, which is but their particular Case.

And without resorting to many Authorities of greater Antiquity: The Commons desire your Lordships to take notice, (with the same regard they do) of the Declaration which that Excellent Prince, King Charles the First of blessed Memory, made in this behalf, in His Answer to the Nineteen Propositions of both Houses of Parliament: Wherein, stating the several parts of this regulated Monarchy, he says: *The King, the House of Lords, and the House of Commons, have each particular Privileges: And among those which belong to the King, he reckons power of Pardoning.* After the enumerating of which, and other his Prerogatives, His said Majesty adds thus: *Again, That the Prince may not make use of this High and perpetual Power, to the hurt of those for whose good he hath it, and make use of the name of publick necessity, for the gain of his private Favourites and Followers, to the detriment of his people; The House of Commons, (an Excellent Custodian of Liberty, &c.) is solely intrusted with the first Propositions concerning the Levies of Monies, and the impeaching of those, who, for their own ends, though countenanced by any surreptitiously-gotten Commissions of the King, have violated that Law, which he is bound (when he knows it) to protect, and to the protection of which they were bound to advise him, at least not to serve him in the contrary. And the Lords being trusted with a Judicatory Power, are an excellent screen and bank between the Prince and People, to assist each against any Inroachments of the other: and by just Judgments to preserve that Law, which ought to be the Rule of every one of the three, &c.* Therefore, the power legally placed in both Houses, is more than sufficient to prevent and restrain the power of Tyranny, &c.

Until the Commons of England have right done them against this Plea of Pardon, they may justly apprehend, that the whole Justice of the Kingdom, in the Case of the Five Lords, may be obstructed and defeated by Pardons of like nature.

An Impeachment is virtually the voice of every particular Subject of this Kingdom, crying out against an oppression, by which every Member of that Body is equally wounded: And it will prove a matter of ill Consequence, that the universality of the people should have occasion ministered and continued to them, to be apprehensive of utmost danger from the Crown, from whence they of right expect protection.

V.

The Commons Exhibited Articles of Impeachment against the said Earl, before any against the Five other Lords, and demanded Judgment upon those Articles: Whereupon, your Lordships having appointed the Trial of the said Earl to be before that of the other Five Lords, Now your Lordships having since inverted that Order, gives a great cause of doubt to the House of Commons, and raises a jealousy in the Hearts of all the Commons of England, that, if they should proceed to the Trial of the said Five Lords in the first place, not only Justice will be obstructed in the Case of those Lords, but that they shall never have right done them in the matter of this Plea of Pardon; which is of so fatal consequence to the whole Kingdom, and a new device to frustrate publick Justice in Parliament.

Which Reasons and Matters being duely weighed by your Lordships, the Commons doubt not but your Lordships will receive satisfaction concerning their Propositions and Proceedings: And will agree, That the Commons ought not, nor can, without deserting their Trust, depart from their former Vote communicated to your Lordships: That the Lords Spiritual ought not to have any Power in any proceedings against the Lords in the Tower; and when that matter shall be settled, and the Methods of Proceedings adjusted, the Commons will then be ready to proceed upon the Trial of the Earl of Danby, (against whom they have already demanded Judgment) and afterwards to the Trial of the other Five Lords in the Tower.

F. I. N. I. S.

The setting up a Pardon to be a bar to the trial of an impeachment, and should this point be admitted, it would effectually discourage the extending any for the future: Whereby the chief Institution for the preservation of the Government (and consequently the Government itself) would be destroyed.